IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 250 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Appellant(s)

Versus

THAKOR GANDAJI CHELAJI & 1 - Opponent(s)

==========

Appearance :
MR KP RAVAL APP for Appellant(s) : 1,
(MR MH SHAIKH) for Opponent(s) : 1 - 2.
NOTICE NOT RECD BACK for Opponent(s) : 1 - 2.
==========

CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA
and
HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 22/11/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.M.KAPADIA)

1. Instant criminal appeal under Section 378 of the

Code of Criminal Procedure ('the Code' for short) is filed by the State of Gujarat against the judgment and order dated 30.1.1985 rendered in Sessions Case No.120 of 1984 by the learned Additional Sessions Judge, Mehsana acquitting respondent Nos.1 and 2/original accused Nos.1 and 2 as well as accused No.3 – Baluben wife of Gandaji Chelaji against whom appeal has not been field.

2. This Court vide order dated 19.6.1986 granted leave and appeal came to be admitted. Bailable warrant in the sum of Rs.2,000/- against each of the accused Nos.1 and 2 was issued.

3. After admission of the appeal, Mr. MH Shaikh, learned advocate had filed appearance on behalf of accused Nos.1 and 2.

4. At the time of final hearing of this appeal, it was brought to the notice of the court that Mr. MH Shaikh, learned advocate who had filed appearance on behalf of the respondents has died. This Court, therefore, vide order dated 14.6.2005 issued fresh notice to the accused Nos.1 and 2 intimating them about the demise of their learned advocate Mr. MH Shaikh. As per the endorsement

made by the office, since the fresh notice issued by this Court to the respondents/original accused vide order dated 14.6.2006 has not been received back, on 14.11.2005, this Court again passed similar order as was passed on 14.6.2005.

5. Thereafter the Section Officer, Criminal Department, through Deputy Registrar has placed a note before this Court wherein it is mentioned that the notices issued to the respondents/original accused in compliance of the order dated 14.6.2005 were returned unserved as they have expired and the entry regarding unserved notice has been made in additional remarks column and notices were also tagged in file but the entry regarding the notice not received back remained to be removed through oversight.

6. The principal District and Sessions Judge, Mehsana vide letter dated 30.8.2005 addressed to the Registrar General of this Court, on the basis of the report of the concerned police authority of Kadi Police Station, informed that both the respondents have died and death certificate of respondent No.1- Thakor Gandaji Chelaji dated 11.7.2005 issued by the Ankhol Gram Panchayat and the written certificate dated 25.8.2005 issued by the

Ankhol Gram Panchayat about death of respondent No.2 - Thakor Kanaji Gandaji were also sent along with this letter.

7. In view of aforesaid State of affairs, since respondents Nos.1 and 2, after admission of this appeal, have died, under Section 394 of the Code the appeal against both the respondents stands abated.

8. Since the appeal is abated, it stands disposed of accordingly.

9. Bailable warrant issued against the respondents stands discharged. Bail bonds stand cancelled. Surety is discharged.

Fresh notice issued by this Court also stands discharged.

(A.M. Kapadia, J.)

(S.R. Brahmbhatt, J.)

...

(karan)